



RULE-MAKING ORDER

CR-103P (May 2009)
(Implements RCW 34.05.360)

Agency: Office of the Insurance Commissioner

Permanent Rule Only

Effective date of rule:

Permanent Rules

X 31 days after filing.

☐ Other (specify) _____ (If less than 31 days after filing, a specific finding under RCW 34.05.380(3) is required and should be stated below)

Any other findings required by other provisions of law as precondition to adoption or effectiveness of rule?

☐ Yes

☒ No

If Yes, explain:

Purpose: The purpose of this new rule is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific designations in the solicitation, sale or purchase of, or advice made in connection with a life insurance or annuity product.

Insurance Commissioner Matter No. R 2011-21

Citation of existing rules affected by this order:

Repealed:

Amended: WAC 284-23-240, 284-23-360

Suspended:

Statutory authority for adoption: RCW 48.02.060 and 48.30.010

Other authority :

PERMANENT RULE (Including Expedited Rule Making)

Adopted under notice filed as WSR 12-01-108 on December 21, 2011.

Describe any changes other than editing from proposed to adopted version:

WAC 284-17-605(7) was deleted. Many comments were received stating problems that would be result from adding this language. Because it is already in WAC 284-23-360(3) the decision was made to eliminate it from the new rule.

If a preliminary cost-benefit analysis was prepared under RCW 34.05.328, a final cost-benefit analysis is available by contacting:

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Date adopted:

February 14, 2012

NAME (TYPE OR PRINT)

Mike Kreidler

SIGNATURE

TITLE

Insurance Commissioner

CODE REVISER USE ONLY

OFFICE OF THE CODE REVISER
STATE OF WASHINGTON
FILED

DATE: February 14, 2012

TIME: 8:47 AM

WSR 12-05-051

(COMPLETE REVERSE SIDE)

**Note: If any category is left blank, it will be calculated as zero.
No descriptive text.**

**Count by whole WAC sections only, from the WAC number through the history note.
A section may be counted in more than one category.**

The number of sections adopted in order to comply with:

Federal statute:	New	_____	Amended	_____	Repealed	_____
Federal rules or standards:	New	_____	Amended	_____	Repealed	_____
Recently enacted state statutes:	New	_____	Amended	_____	Repealed	_____

The number of sections adopted at the request of a nongovernmental entity:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted in the agency's own initiative:

New	<u>1</u>	Amended	<u>2</u>	Repealed	_____
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The number of sections adopted in order to clarify, streamline, or reform agency procedures:

New	_____	Amended	_____	Repealed	_____
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The number of sections adopted using:

Negotiated rule making:	New	_____	Amended	_____	Repealed	_____
Pilot rule making:	New	_____	Amended	_____	Repealed	_____
Other alternative rule making:	New	<u>1</u>	Amended	<u>2</u>	Repealed	_____

NEW SECTION

WAC 284-17-605 Purpose. (1) The purpose of this section is to set forth standards to protect consumers from misleading and fraudulent marketing practices with respect to the use of senior-specific certifications and professional designations in the solicitation, sale or purchase of, or advice made in connection with a life insurance or annuity product. Consumers are misled and harmed when insurance producers use designations and certifications that imply the existence of a level of expertise in senior affairs and financial matters that, in fact, does not exist.

(2) It is an unfair or deceptive practice pursuant to RCW 48.30.010 for an insurance producer to use a senior-specific certification or professional designation that indicates or implies in such a way as to mislead a purchaser that the insurance producer has special certification or training in advising or servicing seniors in connection with the solicitation, sale, or purchase of a life insurance or annuity product or in the provision of advice as to the value of or the advisability of purchasing or selling a life insurance or annuity product, either directly or indirectly through publications or writings, or by issuing or promulgating analyses or reports related to a life insurance or annuity product.

(3) The prohibited use of senior-specific certifications or professional designations includes, but is not limited to, the following:

(a) Use of a certification or professional designation by an insurance producer who has not actually earned or is otherwise ineligible to use such certification or designation;

(b) Use of a nonexistent or self-conferred certification or professional designation;

(c) Use of a certification or professional designation that indicates or implies a level of occupational qualifications obtained through education, training or experience that the insurance producer using the certification or designation does not have; and

(d) Use of a certification or professional designation that was obtained from a certifying or designating organization that:

(i) Is primarily engaged in the business of instruction in sales or marketing;

(ii) Does not have reasonable standards or procedures for assuring the competency of its certificants or designees;

(iii) Does not have reasonable standards or procedures for monitoring and disciplining its certificants or designees for improper or unethical conduct; or

(iv) Does not have reasonable continuing education requirements for its certificants or designees in order to maintain the certificate or designation.

(4) There is a rebuttable presumption that a certifying or

designating organization is not disqualified solely for purposes of subsection (3)(d) of this section when the certification or designation issued from the organization does not primarily apply to sales or marketing and when the organization or the certification or designation in question has been accredited by:

- (a) The American National Standards Institute (ANSI);
- (b) The National Commission for Certifying Agencies; or
- (c) Any organization that is on the U.S. Department of Education's list entitled "Accrediting Agencies Recognized for Title IV Purposes."

(5) In determining if a combination of words, or an acronym standing for a combination of words, constitutes a certification or professional designation indicating or implying that a person has special skill, knowledge, experience or qualifications in advising or servicing seniors, factors implying such include, but are not limited to, the following:

- (a) Use of the word "senior," "retirement," "elder," or similar words combined with one or more words such as "certified," "registered," "chartered," "advisor," "specialist," "consultant," "planner," or similar words in the name of the certification or professional designation; and

- (b) The manner in which those words are combined.

(6) For purposes of this section, a job title within an organization that is licensed or registered by a state or federal financial services regulatory agency is not a certification or professional designation, unless it is used in a manner that would confuse or mislead a reasonable consumer, when the job title:

- (a) Indicates seniority or standing within the organization; or
- (b) Specifies an individual's area of specialization within the organization.

AMENDATORY SECTION (Amending Matter No. R 97-04, filed 5/6/98, effective 6/6/98)

WAC 284-23-240 General rules. (1) Each insurer (~~shall~~) must maintain at its home office or principal office, a complete file containing one copy of each document authorized by the insurer for use under this regulation. The file (~~shall~~) must contain one copy of each authorized form for a period of three years following the date of its last authorized use unless otherwise provided by this regulation.

(2) An (~~agent shall~~) insurance producer must inform the prospective purchaser, prior to commencing any presentation that may lead to the sale of life insurance(~~7~~) that the (~~agent~~) insurance producer is acting as (~~a life~~) an insurance (~~agent~~) producer with a life insurance line of authority. In sales situations in which an (~~agent~~) insurance producer is not involved, the insurer (~~shall~~) must identify its full name.

(3) Terms such as financial planner, investment advisor, financial consultant or financial counselor (~~shall~~) must not be used by an (~~agent~~) insurance producer unless the (~~agent~~) insurance producer is (~~generally~~) engaged in an advisory business and receives a substantial part of their compensation from that source unrelated to the sale of insurance.

(4) There (~~shall~~) must be no reference to a dividend or nonguaranteed element in the policy summary. Any reference to a dividend or a nonguaranteed element in the sales process must comply with the provisions of chapter 48.23A RCW.

(5) Any statement regarding the use of the life insurance cost comparison indexes (~~shall~~) must include an explanation to the effect that the indexes are useful only for the comparison of the relative costs of two or more similar policies.

AMENDATORY SECTION (Amending Order R 79-1, filed 6/25/79, effective 4/1/80)

WAC 284-23-360 General rules. (1) Each insurer (~~shall~~) must maintain at its home office or principal office, a complete file containing one copy of each document authorized by the insurer for use pursuant to this regulation. Such file (~~shall~~) must contain one copy of each authorized form for a period of at least three years following the date of its last authorized use.

(2) An (~~agent shall~~) insurance producer must inform the prospective purchaser, prior to commencing a sales presentation,

that the ((agent)) insurance producer is acting as ((a life)) an insurance ((agent)) producer with a life insurance line of authority and ((shall)) must inform the prospective purchaser of the full name of the ((insurance company)) insurer which the ((agent)) insurance producer is representing ((to the buyer)). In sales situations in which an ((agent)) insurance producer is not involved, the insurer ((shall)) must identify its full name.

(3) Terms such as financial planner, investment advisor, financial consultant, or financial ((counseling shall)) counselor must not be used by an ((agent)) insurance producer unless ((he)) the insurance producer is ((generally)) engaged in an advisory business and receives a ((material)) substantial part of ((his)) their compensation from that source unrelated to the sale of insurance.

(4) Any reference to dividends or to excess interest credits must include a statement that such dividends or credits are not guaranteed.

(5) A presentation of benefits ((shall)) must not display guaranteed and nonguaranteed benefits as a single sum unless guaranteed benefits are shown separately in close proximity thereto and with equal prominence.

(6) Sales promotion literature and contract forms ((shall)) must not state or imply that annuity contracts or deposit funds are the same as savings accounts or deposits in banking or savings institutions. The use of passbooks which resemble savings bank passbooks is prohibited.